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IN THE

Supreme Court of the United States

No. 129.

October Term, 1946.

COLUMBIA GAS & ELECTRIC CORPORATION,
Petitioner,

v.

UNITED STATES OF AMERICA, BEN WILLIAMSON, JR., Trustee of INLAND GAS CORPORATION, RUSSELL VAN HORN, et al., as a Committee for Bondholders, and MORRIS GREEN.

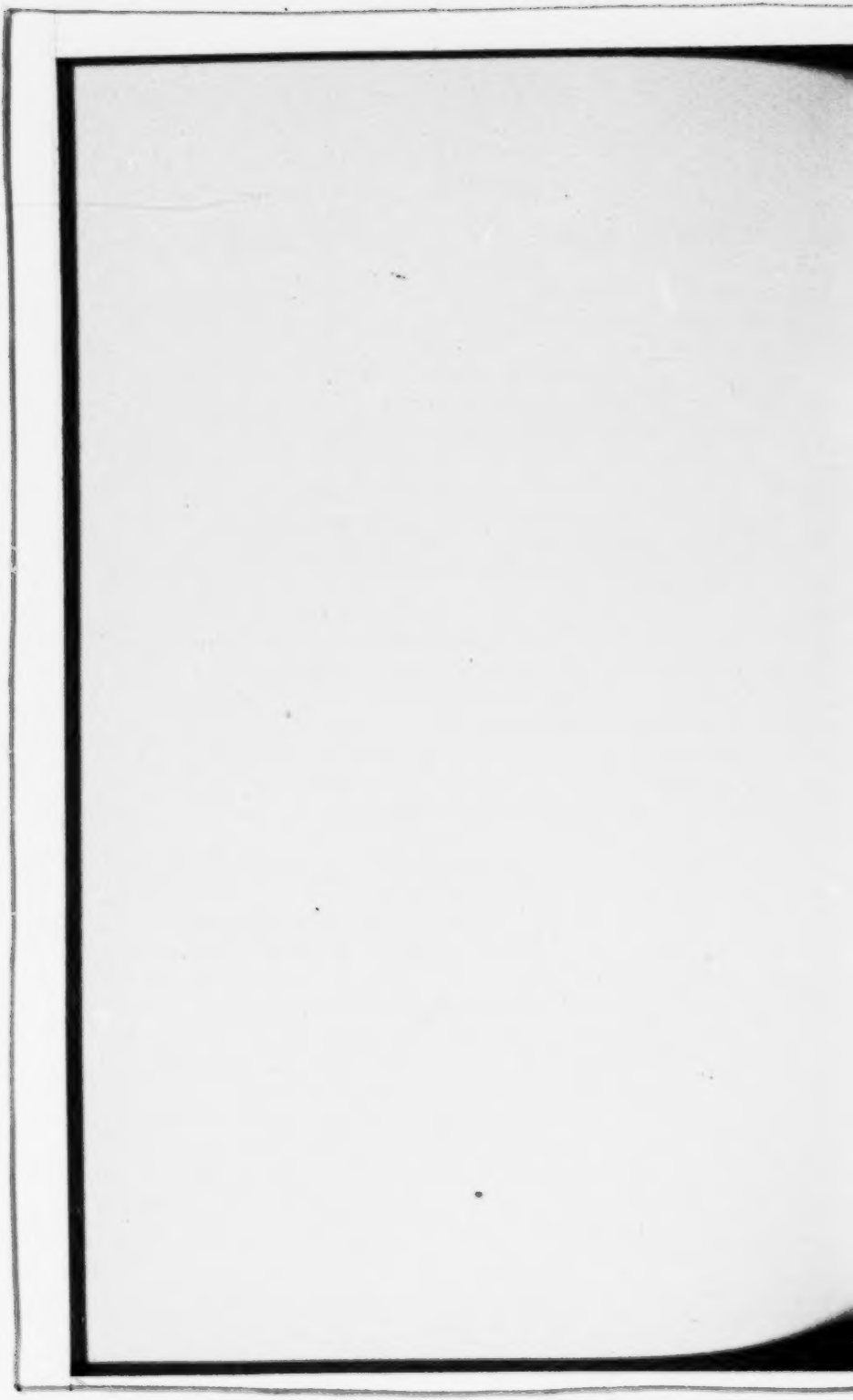
On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR RUSSELL VAN HORN, WENDELL E. WARNER AND EDWARD AUSTIN WATERS, AS A COMMITTEE FOR BONDHOLDERS OF INLAND GAS CORPORATION, IN OPPOSITION.

ARTHUR G. LOGAN,
Continental American Building,
Wilmington 33, Delaware,
Attorney for Respondents, Russell Van Horn, et al., as a Committee for Bondholders of Inland Gas Corporation.

ROBERT J. BULKLEY,
Bulkley Building,
Cleveland 15, Ohio,
RICHARD B. HAND,
111 Broadway,
New York 6, N. Y.,
Of Counsel.

International, 236 Chestnut St., Phila. 6, Pa.



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FOREWORD.

The District Court consolidated for trial three causes. (R. I, 434.)[1] They were also consolidated on appeal into one Record. (R. I, 665.) Columbia[2] filed a Petition for Writs of Certiorari in each of the three causes. The Circuit Court of Appeals rendered a single opinion. (R. IX, 3-23). The Circuit Court of Appeals, however, entered

[1] Record references will be to Volume in Roman numerals and to Page in Arabic numerals.

[2] Hereinafter, the same abbreviations will be used in this brief as in Columbia's Petition and Brief.

three separate decrees. (R. IX, 1-2.) This brief is in opposition in only one of said causes, namely, the one above-captioned. These respondents have no interest in the other two causes.

OPINIONS BELOW.

The District Court rendered no opinion but filed Findings of Fact and Conclusions of Law. (R. I, 590-603.) The opinion of the Circuit Court of Appeals is reported in 151 F. 2d. 461 (R. IX, 3-23, 46), and its opinion denying petition for rehearing is reported in 153 F. 2d. 101. (R. IX, 56-57.)

The opinion of this Court dismissing an appeal from the judgment of the District Court is reported in 322 U. S. 379. The opinion of the Circuit Court of Appeals on an appeal taken at an earlier stage of the proceedings is reported in 122 F. 2d. 223.

JURISDICTION.

The decrees of the Circuit Court of Appeals were entered on October 9, 1945, and were amended on November 26, 1945, and petition for rehearing was denied on January 21, 1946. (R. IX, 1-2, 45-46.) An order entered by the late Chief Justice extended petitioner's time for applying for writs of certiorari to June 1, 1946 (R. IX, 59), and the petition for writs of certiorari was filed on May 29, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The Findings of Fact and Conclusions of Law of the District Court involve not only Inland but the other two companies. (R. I, 590-602.)[3] The Findings of Fact are

[3] For the convenience of the Court we reproduce the Findings of Fact and Conclusions of Law as Appendix "A" to this brief.

of course the ultimate facts, and in order that their true scope may be understood it is necessary to understand some of the details upon which they are founded. The "Summary Statement" contained in Columbia's Petition is not a fair presentation of the case in so far as it involves Inland as it does not contain all that is material to the consideration of the Inland case, and, therefore, we set forth the following concise statement of the case in so far as it involves Inland.

Inland was incorporated on March 30, 1927. (R. II, 332.) Columbia acquired control of it on November 6, 1930, and caused it to be placed in receivership on December 2, 1930. (Infra, pp. 10 to 12.) Between the time it was incorporated and the time when Columbia acquired control, Inland had acquired extensive gas reserves and valuable gas purchase contracts, assuring it of an adequate gas supply, had built a pipe line from the fields to supply gas in Ashland, Kentucky; Huntington, West Virginia; Ironton, Ohio and the vicinity of said towns, had taken many of Columbia's industrial customers, *had demonstrated that it was in a position to take all of Columbia's industrial customers within reach of its pipe lines, and its earnings were rapidly increasing.*

The gas purchase contracts Inland had obtained were made with Piney Oil & Gas Company and Hamilton Gas Company and in Columbia's Petition, page 10, are referred to as having been burdensome gas purchase contracts. However, they were only burdensome if markets for gas could not have been found. This was admitted by Mr. Reynolds, the President of Columbia, on cross-examination. He testified with respect to said gas contracts:

> "Q. You knew that these gas reserves and contracts were valuable? A. Yes, certainly.
>
> "Q. And that they were burdensome only to the extent that they could not find markets for them, did you not? A. That is correct." (R. III, 1338.)

Inland had to pay a substantial discount to raise the necessary funds to build its pipe line, but the discount was not out of line with discounts natural gas pipe line companies were currently being forced to pay. Panhandle Eastern Pipe Line Company, which was built in 1930, was forced to pay a discount of substantially the same amount under a contract to which a subsidiary of Columbia was a party. (R. III, 1307, 1312, 1315.) Columbia itself, in the early days, had paid a discount as much as, if not more than, that paid by Inland. (R. III, 1318, 1321.)

Inland was not doomed to certain financial disaster as Columbia would have the Court believe, but instead had likely prospects of real success regardless of whether or not the Detroit project was completed. Inland served industrial customers only, and in that manner operated without being regulated by State or Federal authorities. This gave Inland a competitive advantage over the Columbia subsidiaries, all of which served both industrial customers and domestic customers. The competitive advantage came about due to the fact that all companies in the Kentucky-West Virginia-Ohio area *serving both industrial and domestic customers* were regulated by State authorities and one of the regulations required them to serve domestic customers first. The Columbia subsidiaries serving in the area reached by the Inland pipe lines on many occasions prior to 1928, had been forced to curtail deliveries to industrial customers or to shut down completely during cold weather in order to serve domestic customers. This had caused many complaints and when the Inland pipe line was built and Inland was able to offer gas on an uninterruptible basis to industrial customers, many who had previously been served by Columbia turned to Inland. (R. V, 2233-2239, 2460, 2510-2537; I, 578-581.)

Not only were the Columbia subsidiaries in a position where they could not offer gas to their industrial customers on an uninterruptible basis, but Inland was in a position where it could buy gas more advantageously because only

serving industrial customers allowed it to operate on a more constant load factor. (R. IV, 1414-1416.) Furthermore, Inland, being unregulated, could grant preferential rates and make its own credit terms. (R. I, 581.)

The extent of Inland's threat to Columbia is found in the fact that approximately one-quarter of Columbia's total gas sales was to industrial customers. The dollar volume of industrial sales by the Columbia subsidiaries in 1930, which was after Inland had made serious inroads into the business, was $12,683,258.00. (R. VI, 2949.) On cross-examination Columbia's President admitted that Inland enjoyed this competitive advantage which put it in a position where it could take all of Columbia's industrial business. Mr. Reynolds testified:

> "The Court: I think the question was the possibility of an extension following the original development that would increase the menace or the harm to your business whether or not that was contemplated by you as one of the dangers with which you were confronted."
>
> "The Deponent: Let's put it this way, sir: I think we felt that a company coming in there like that, if it had adequate gas and held itself out only for a non-regulated business to industrial customers only, it *could take all of our industrial business in that way,* if it wanted it. That was not a business on which we were on a parity with them." (Italics supplied.) (R. III, 1340.)

He testified that due to this competitive advantage many customers were taken and "we didn't like to lose earnings" (R. III, 1339) and "we didn't like it". (R. III, 1331.)

Judge Harold A. Ritz, counsel for Columbia in 1930, testified that due to this competitive advantage Inland took the principal customers of Columbia in the Ashland area,

(R. IV, 1862) that it was a matter of concern to Columbia that Inland served only industrial customers and said: "Yes, we were losing a good bit of our business, and *it was the cream of the business.* They took the cream and left us the skim milk". (R. IV, 1862.)

This concern which Columbia officials felt over the potential inroads of Inland into the "cream" of Columbia's business had been manifest from the first time Columbia had heard of the plan to have Inland build a pipe line and engage in the sale of natural gas to industrial customers only. The testimony discloses that from the beginning Columbia hoped to destroy Inland. (R. II, 301; III, 954-955, 1328-1331, 1334, 1340; IV, 1516-1518, 1862.)

In 1928 Columbia officials heard of the plan to have Inland build a pipe line and engage in the business of selling natural gas to industrial customers only. (R. II, 300.) They immediately proceeded to "watch" Inland. Mr. Gossler, then President of Inland, instructed Mr. Reynolds, then Vice President, to investigate and Mr. Gossler reported to the Board. (R. III, 1327-28.) The top executive officials of Columbia had numerous discussions about the plans of Inland and "discussed its significance". (R. III, 1243-44, 1328-30.) They protested to the Better Business Bureau in an effort to prevent Inland from selling bonds to the public. (R. III, 1245, 1328-30.) They "investigated the situation as it stood then". (R. III, 1245.) They "watched Inland and Kentucky Fuel from the time they put out their first bonds * * * and tried to get information." (R. IV, 1516.) Columbia's scouts watched the progress of Inland's and Kentucky Fuel's activities in the field. (R. III, 1394-96, 1341-43, 1348-49, 1285.) They watched their sales. (R. III, 1398.) And they got information concerning their negotiations. (R. III, 1341-43.)

Although Inland made serious inroads into Columbia's business, it did not earn its bond interest during the first few years and the Columbia officials came to the conclusion that Inland might default in the payment of interest. (R.

IV, 1517, 1741.) They found out that, if so, the holder of 25% in principal amount of the outstanding bonds would be in a position where he could force the declaration of a default and thereby accelerate payment of the entire mortgage and could force a foreclosure sale and govern the time of such a sale. (R. III, 1255-58, 1348-49, 1405-06; IV, 1529.) With this knowledge in mind, Columbia started to buy Inland bonds secretly. (R. III, 1406-07.) The matter was kept so secret that not even all the Columbia directors were advised that the purchases were being made. (R. III, 833, 1406-07.) Between January 20, 1930, when the first purchases were made and April 30, 1930, Columbia spent a total of $1,079,804.43 for Inland bonds without approval of the board or the executive committee, and thereby acquired more than the 25% needed to force a default and a foreclosure. (R. III, 1405-07; Ex. A. to Ans. to Int. #1, R. VIII, 712.) Later Columbia purchased additional bonds to be in a better position at a foreclosure sale to buy and to be in a position to control and govern any reorganization or foreclosure. (R. IV, 1528-29; III, 1365.) Columbia also purchased $320,100.00 of Inland's debentures in order to have a commanding position in the event of any foreclosure or reorganization forced by Columbia. (Ex. A. to Ans. to Int. #1, R. VIII, 714; R. III, 1365.)

The default Columbia expected to occur in the spring or summer of 1930, did not occur, however, due to the fact that the Syndicate was organized by Hope which, as the District Court found, "constituted a sufficient combination of financial strength and business experience to foreshadow success." (Finding #10.) This Syndicate proceeded to advance money to Inland to cover its interest requirements and sinking fund requirements. (R. II, 518.) This placed Inland in a position where it could go out and acquire additional customers from Columbia and expand its markets to a point where the Piney Oil and Gas Company and the Hamilton Gas Company contracts would prove to be of value. As the action of the Syndicate in advancing the

money prevented any default, Columbia was left with bonds and debentures which were no longer in a position to force a default or to control or govern a foreclosure. Columbia *then* purchased the stock control from the Syndicate and paid the Syndicate a handsome profit to obtain control of Inland and the other companies. (See Finding #13.)

Columbia did not purchase the Inland acreage as additional reserves for the Seaboard line. Mr. Weymouth, a Columbia Vice President (R. V, 2800) admitted this on cross-examination. He said:

> "Q. And so the Inland acreage wasn't acquired for the Seaboard Line, as I understand it? A. It wasn't acquired for that, no; not specifically, although it probably would have been used in the pot with all the rest of its gas supplies.
> "Q. I mean that there was a different purpose for its acquisition that you mentioned? A. Yes." (R. VI, 2840.)

As Columbia did not purchase the Inland acreage for gas reserves, then the only other reason why Columbia spent such a vast sum must have been to get control of Inland which was then taking and threatening to continue to take the "cream" of its business and which was in a position where it "could take all of our industrial business." (R. III, 1340.)

On October 30, 1930, Columbia entered into the contract with the Syndicate to obtain control. It not only agreed to make the payment giving the Syndicate members a substantial profit, but assumed many obligations including the contingent liability of Piney Oil & Gas Company and Hamilton Gas Company against Inland for failing to take the full amount of gas for which it was obligated. (R. III, 849.)

On November 6, 1930, Columbia nominees, consisting mainly of attorneys for Columbia, were placed on the In-

land board of directors and Columbia proceeded to treat Inland as one of its subsidiaries. On November 26, 1930, the attorneys were replaced by minor employees of a wholly owned Columbia subsidiary, Columbia Engineering and Management Corporation. (R. IV, 1532-33; Ex. M 5 to Ans. to Ints. #34, R. VIII, 866; Ans to Int. #35, R. VIII, 711.) Mr. Lockhart, the President of Inland, was continued, but it was understood that he was acting as an employee of Columbia. (Ans. to Int. #35, R. VIII, 711; R. IV, 1433; V, 2495.) Not only did Columbia cease all work on the Detroit project after November 6, 1930 (Reply to Requests to Admit #34 and #35, R. II, 380; R. III, 1287) which would have made a large market accessible to Inland for its excess gas and particularly for the gas it was obligated to take from Piney Oil & Gas Company and Hamilton Gas Company (R. IV, 1798), but Columbia stopped Inland from taking any new business, i. e., Inland was not to take any more of Columbia's customers. The best proof that Columbia instructed Mr. Lockhart not to let Inland expand further is shown in a letter from Mr. Lockhart to Mr. Pew, who was in charge of Columbia's natural gas activities. (R. IV, 1433.) On November 19, 1930, Mr. Lockhart wrote to Mr. Pew "You have said to me that you wanted us to take care of our business and carry on, but not to start anything new." (R. III, 739; IV, 1433.) That the instructions were carried out to the letter is shown by Cullman Exhibits 1-A, 1-B and 1-C. (R. VII, 1-3.) A copy of 1-A is annexed as Appendix "B" hereto. This shows how customers were being taken from Columbia until the time Columbia got control of Inland and that *then Inland stopped taking Columbia's customers.* None were taken after November 6, 1930. Curiously enough, some were taken again at a later period, but not until after the Federal Trade Commission conducted an inquiry concerning why Columbia permitted Inland to go into receivedship. (R. VI, 2853.) This exhibit (Cullman 1-A) shows definitely that Columbia did achieve its purpose of stopping Inland from taking its customers.

On November 25, 1930, *which was less than 3 weeks after the purchase,* the Columbia Executive Committee met and considered receivership for Inland. (R. III, 1364; IV, 1538, 1574-76.) Immediately thereafter Mr. Caldwell, the Ashland, Kentucky, attorney for Inland, and Mr. Lockhart, President, were summoned to New York by Columbia officials and were told it had been determined to place Inland in receivership. (R. II, 396-399; 498-499.) At that time Inland had no "pressing obligations" and no creditors who were in a position to file a receivership bill. (R. II, 500.) It was determined, however, that some creditors should be secured whereupon Messrs. Caldwell and Lockhart went back to Ashland to cause a "voluntary receivership." (R. II, 398-402.) An attorney was engaged to prepare a bill of complaint in which he named J. T. William and Miles Gibson as plaintiffs. He prepared it the afternoon of December 1, 1930. (R. II, 402.) *The named plaintiffs didn't know about it until after 8 o'clock that night.* (R. II, 408-409.) They were well drillers working for Inland, under a contract which would not entitle them to any payment whatsoever "until completion of said well". (Gibson Ex. No. 1, R. VII, 219.) The well they were drilling was about half completed and there was "nothing due" them. (R. II, 410.) They were summoned to Ashland on December 1, 1930, and arrived about 8 o'clock in the evening, at which time they were taken to the Inland office and were asked if they would execute the bill of complaint which had been prepared and which prayed that a receiver be appointed for Inland. (R. II, 408-415.) They objected to doing so, but were prevailed upon to execute it. Mr. Williams testified:

> "Q. Who said that? A. Well, I couldn't recall just which one it was, whether it was Mr. Lockhart or Mr. Caldwell.
>
> "Q. Well, then proceed to tell us what happened as best you can remember. A. Well, that was about

all. I know they just told us about it and wanted us to sign a paper there.

"Q. What did you say? A. I didn't understand it. I didn't want to sign it. I was afraid it would get us into trouble.

"Q. I didn't understand your answer. A. I said I didn't want to sign it. I was afraid it might get us into trouble, and I said that I would leave it up to Mr. Van Patten.

"He said, 'Better go ahead and sign it. If you go ahead and finish the well, you might not get paid for it. If you go ahead and finish the well, if it were in receivership first, you will get your money.'

"He said we would get our money." (R. II, 415.)

Before they did execute the bill of complaint, however, they asked about payment when the well was completed and were assured that upon completion of the well, they would be paid the full price. (R. II, 415.) With that promise they did execute the bill of complaint with its allegations that money was due and owing to them and that they had been pressing for payment. The bill was filed the night of December 1, 1930. *Prior* to the time the plaintiffs were asked to sign the bill of complaint a meeting of the Inland Board of Directors, composed of the Columbia employees, had been held in the Columbia offices in New York, at which a resolution was passed reciting that Williams and Gibson were creditors of Inland and were proposing to file a bill of complaint against Inland asking for the appointment of a receiver and resolving that a consent answer should be filed. (R. II, 553-556.) Such an answer was filed on the night of December 1, 1930. (R. II, 403.) Mr. Lockhart was appointed receiver on December 2, 1930. (R. II, 403.) That had been Columbia's desire. (R. II, 404; V, 2492.)

By December 22, 1930, Williams and Gibson had completed the well and then demanded full payment. They had to make several demands for payment (R. II, 412), and

"spoke very potently" (R. II, 469), whereupon a Columbia subsidiary, Warfield Natural Gas Company, paid them the full amount for drilling the well and took an assignment from them of the claim they had against Inland. (R. II, 413; 456-460.)

Mr. Sloan, local manager in Ashland, Ky., of Warfield, made the payment and took the receipt. Mr. Sloan testified that he made the payment pursuant to instructions from Judge Ritz, General Counsel of Warfield. (R. II, 456-460.) Sloan testified that he did not make any report about the receipt because "I said nothing to them because Mr. Caldwell told me to keep that receipt and to say nothing to no one about it." (R. II, 460.) Mr. Lockhart, as receiver of Inland and *without authority of the Court*, paid Warfield the $7418.85, which Warfield paid Williams and Gibson. (R. II, 456-460.) The true facts were concealed on the Inland books. (R. II, 515-516.)

Columbia caused Kentucky Fuel to be placed in receivership the same day under somewhat similar circumstances in that Columbia took a dubious claim in the sum of $9,000, which it had acquired from the Syndicate in connection with the purchase, and assigned it for no consideration to American Rolling Mills and then had American Rolling Mills execute a bill of complaint. (R. II, 500-501.) Again we find the Board, consisting of Columbia's same nominees passing resolutions reciting that American Rolling Mills proposed to file a bill of complaint for its debt and providing that a consent answer should be filed. (R. II, 563-565.)

The District Court found that Columbia's actions in placing Inland and Kentucky Fuel in receivership "resulted in immediate discontinuance of all efforts to promote the Detroit project, and in curtailment of further extension of the subsisting competition between the subsidiaries of Columbia and American Fuel." (Finding #13.)

Before the receivers were appointed, Columbia took steps to have a bondholder committee organized for both

Inland and Kentucky Fuel.[4] (Reply to Request to Admit #48, R. II, 524; R. III, 1298-99). Columbia deposited its bonds under different deposit agreements than the ones the committee used for the deposit of public held bonds. Columbia's deposit of Inland bonds was made in order to keep the Vanston Committee going and in a manner whereby Columbia could still control any proposed sale in the reorganization. (R. III, 1301.)

After the receivership Mr. Lockhart continued to report regularly to Columbia. At the trial numerous letters, most of which were written by Lockhart to Columbia officials were introduced. (R. II, 566-599, 602-621; III, 731-748, 765-814, 894-907.) These letters show clearly that Lockhart, who was an employee of Columbia with respect to the other companies not in receivership, made no distinction with respect to his position as receiver of Inland. He was subservient to Columbia in all matters and apparently acted as they wanted and instructed him to do. He refused to sell gas at less than 25¢ per mcf as he had been instructed. (See letters, R. II, 612, 615, 619; III, 894-895.) The letter appearing in Volume III, at page 894, shows that Columbia had become concerned over a report that he had made a contract to sell gas "at a cut rate." He wrote to Mr. Pew, a Columbia Vice-President, on September 25, 1931, and said:

> "I am glad to relieve any anxiety you may have on this score by telling you that we have not taken this business at a cut rate." (R. III, 894.)

The last paragraph of the letter reads:

> "I want to say in conclusion that we have neither taken nor solicited any business at anything less than our standard rate of twenty-five cents since the conversa-

[4] This committee is the Vanston Committee, which did not object to the Columbia claims and is not the Van Horn Committee which is an Appellee here.

tion you and I had in my office last December." (R. III, 894-895.)

Not only did Lockhart refuse to cut rates but he advised Columbia regularly concerning any rumors or facts indicating that upon a foresclosure sale of the Inland properties Columbia would have competition. (See R. II, 590, 591, 592, 594, 602-605, 607, 609, 613; III, 777, 801, 901, 902, 904, 905. He even took trips to trace rumors to their source. (R. II, 607.)

Lockhart advised Columbia concerning any threats of litigation arising by virtue of the facts that Columbia had put Inland in receivership. (R. II, 566-68, 570-76, 613, 617; III, 731, 734, 797, 906.) He asked Columbia if he could take on new business (R. II, 605-606, 616.) He sent Columbia a list of Inland's contracts and customers. (R. III, 740.) He offered to work together to get new customers for Inland or Columbia, as Columbia desired. (R. II, 616.) He gave Columbia a statement of the Inland acreage he surrendered. (R. III, 906-908.) He promised Columbia he would not try to extend the Inland pipe lines to the Portsmouth market. (R. III, 898.) In addition he turned to Columbia regularly for instructions. (R. II, 569, 587, 588, 589, 593, 618; III, 735, 737, 738, 739, 747, 776, 780, 783, 812, 813.)

On or about November 18, 1931, Warfield Natural Gas Company, a wholly owned subsidiary of Columbia, entered into contracts with Piney Oil & Gas Company and Hamilton Gas Company respectively in which it was recited that Warfield proposed to buy the Inland properties at a foreclosure sale. The contracts then provide that in the event Warfield or an affiliated or associated company became the owner of the pipe lines of Inland, the gas requirements of said pipe lines, as defined in said agreements, would be supplied on the basis of Piney Oil & Gas Company delivering natural gas produced from certain lands and leases up to 38% of said requirements and Hamilton Gas Company delivering natural gas produced from certain lands and leases

up to 25% of said requirements. There was no provision stating that Inland itself would supply any amount of said requirements. (Ex. K. to Ans. to Int. #29, R. VIII, 826-853; Larner Exhibit No. 2, R. VII, 414). These contracts not only provide that the gas requirements of Inland shall be supplied in part by Piney Oil & Gas Company and Hamilton Gas Company and apparently the balance from either Inland's properties or Warfield's, but list the customers of Inland which in the main were customers Inland had taken from Columbia prior to Columbia's acquisition of control. The customer's so listed constituted the market controlled by Inland which Columbia was proposing to divide up. These two contracts show that Columbia intended to acquire the physical properties of Inland and its markets and "get back" the customers Inland had taken from it and then serve them in such a manner as it saw fit. (R. VI, 2850.) Not only did Columbia enter into the two contracts just referred to with Piney Oil & Gas Company and Hamilton Gas Company, but entered into two others which gave Columbia control of all the gas production of said two companies and thus prevented any competitor at a foreclosure sale from being able to put itself in position to get these gas reserves for Inland. (See testimony of Thomas R. Weymouth, R. V, 2804 to VI, 2840.) That Columbia had intended at all times to get control of Inland's physical assets is not only demonstrated in the two contracts referred to above, but in Mr. Weymouth's testimony. He stated, inter alia:

> "A. I have no recollection of a discussion among ourselves in the Columbia group as to why we should do this, except that it was the general spirit there that they wanted to maintain the assets of the Inland Company if possible and preserve them *against the day when Columbia might become the owner of them.*" (R. VI, 2827.)

Columbia's action, after obtaining control of Inland on November 6, 1930, was to prevent it from taking on any

new business, to place it in receivership and then enter into contracts as to the method Inland's customers would be served after Columbia acquired control of the physical properties at a foreclosure sale. *That was one of Columbia's alternatives.* It was the alternative leading to Inland's destruction. The other alternative was to save Inland. Inland had gas and its success depended upon getting additional markets. Its gas purchase contracts were valuable if it was able to find markets. Inland could have earned its interest charges so that receivership would not have been necessary if it had had a large customer. COLUMBIA COULD HAVE BEEN THAT CUSTOMER. (R. III, 1338; IV, 1482-83.) If Columbia had desired to do so, it could have bought gas from Inland and saved it, and at the same time saved its own gas production for the Seaboard line. Mr. Reynolds testified:

> "Q. I mean, if you wanted to save them you could have bought gas and done so? A. Could have done it in that sense, yes, could have been done.
> "Q. But you elected not to do so? A. Certainly; we had additional obligations. Once it was taken by us it meant that we had to cut back other gas that we were buying or producing and for which we were making payments to other people for leases, rentals, etc.
> "Q. But you would have to shut down on your own wells? A. Yes, shut down what we were producing.
> "Q. Were you not trying to conserve the other wells at that time? Would it not have been a point of policy if you had cut down your production and saved it for the eastern (Seaboard) lines? A. It may have been that other policies could have been followed. I have told you what ours were.
> "Q. If you had purchased those properties only for the gas at that time you could have taken the gas out and saved gas in your own wells in other parts of Kentucky and West Virginia and used it later, could you

not? A. That is a possibility, yes." (R. IV, 1483-84.)

Although Columbia purchased with full knowledge of Inland's financial condition (Finding #9), Columbia did not even consider purchasing gas from Inland in order to allow it to earn enough to meet the interest on its bonds. (R. IV, 1482.)

Columbia not only failed and refused to take any Inland gas for the Seaboard line, but would not even take gas into its system and thus save its own gas production as additional reserves for the Seaboard line, when to do so would have given it the additional gas it claims it then needed, *and would have saved Inland.*

Not only did Columbia refuse to save Inland, but refused after the receivership to aid Inland. (R. II, 470; III, 776-777, 897). *The competitive advantage Inland had enjoyed ended with receivership because then the Receiver was not in a position to offer industry long term contracts or finance expansion.* (R. II, 470.) With the threat of foreclosure and sale of the physical properties definite assurances concerning the future could not be given. Mr. Lockhart ran into this situation early in the receivership and sought to enlist Columbia's aid to the extent of having Columbia declare that if it purchased the physical properties at a foreclosure sale it would carry out contracts made by the Receiver. This would have made it possible for Lockhart to have at least kept the customers Inland then had. See letter from Lockhart to Columbia imploring it to at least render this slight aid. (R. II, 605-606). Columbia recited its intention to buy in the Piney Oil & Gas Company and Hamilton Gas Company contracts, but would not aid the Receiver.

Although Inland stopped taking customers from Columbia after Columbia obtained control, and after receivership could not offer industrial customers long term contracts, it did earn in one year (1941) $29,795.08 over all fixed charges. What Inland might have earned, but for

Columbia's actions the District Court found to be speculative. (Finding #15.) In connection with that speculation the fact is that Inland's gross income was rising rapidly before Columbia acquired control. In 1928 the gross income showed a *loss* of $89,790.28. In 1929 the gross income showed a *gain* of $15,053.72, or a total gain in 1929 over 1928 of $104,844.00. In 1930 the gross income showed a *gain* of $93,284.80, which represented a gain over 1929 of $78,231.08, and a total gain for the two years of $183,075.08 over 1928. The pipe line was not completed until the Fall of 1928. In the two years of operation of the pipe line free from Columbia control, the income was on a rapid rise. The following year (1931) the income fell to a *loss* of $34,934.64 which was $128,219.44 less than in 1930. (Grayburn Ex. 3, Ex. Vol. IV, 810; Cullman Ex. B, C, & D, Ex. Vol. 1, 61-63.)

QUESTION PRESENTED.

The "Question Presented" by Columbia in its Petition, page 20, and the arguments in support thereof contained in the Brief in Support of Petition are interesting, but not applicable to the facts in this cause.

ARGUMENT.

I. Summary of Argument.

The Petition for a Writ of Certiorari should be denied because the judgments of the Courts below are merely that as Columbia appeared in the bankruptcy proceedings below in the role of a claimant seeking affirmative relief, i. e., that its claims on bonds and debentures be allowed, and as the District Court, sitting as a Court of Equity, found that Columbia was in Court with unclean hands, in that it acquired and used its claims illegally and inequitably to the detriment and injury of the bankrupt and its other creditors, the Court should refuse to lend its aid to Columbia, or at least refuse, through the technique of subordination, to allow Columbia to have the same standing as innocent claimants.[5]

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[5] This court determined such action is a proper function of a bankruptcy court in the case of *Prudence Realization Corp. v. Geist,* 316 U. S. 89, 86 L. ed. 1293, where the Court said:

> "The court of bankruptcy is a court of equity to which the judicial administration of the bankrupt's estate is committed, Securities & Exch. Commission v. United States Realty & Improv. Co. 310 U. S. 434, 455-457, 84 L. ed. 1293, 1303-1305, 60 S. Ct. 1044, 42 Am. Bankr Rep(NS) 602, and it is for that court—not without appropriate regard for rights acquired under rules of state law—to define and apply federal law in determining the extent to which the inequitable conduct of a claimant in acquiring or asserting his claim in bankruptcy requires its subordination to other claims which, in other respects, are of the same class. Cf. Taylor v. Standard Gas & E. Co., 306 U. S. 307, 83 L. ed. 669, 59 S. Ct. 543, 38 Am. Bankr Rep(NS) 692, supra; Pepper v. Litton, 308 U. S. 295, 84 L. ed. 281, 60 S. Ct. 238, 41 Am. Bankr Rep(NS) 279, supra."

II. The "Question Presented" by Columbia is Not in This Case.

In its Petition for Writ of Certiorari Columbia states the single question to be:

> "Whether in bankruptcy proceedings a creditor who has paid fair value shall, upon a finding that in acquiring the credit he violated the anti-trust laws, be subordinated to other creditors?"

This question ignores the nature of the proceedings below. The proceedings in the District Court in this cause are proceedings under the Bankruptcy Act for the reorganization of Inland Gas Corporation. In those proceedings Columbia filed claims on its bonds, debentures and general, unsecured claims, and sought to have the same allowed. (R. I, 358-359, 466-467.) The Van Horn Committee filed a Petition setting forth that said claims had been acquired and used in violation of the anti-trust laws and that Columbia had, through its inequitable conduct, caused Inland severe injury and damage. (R. I, 358-408.) Columbia filed its Answer to said Petition. (R. I, 466-496.) In and by its Answer Columbia prayed that the Van Horn Committee Petition be dismissed and that "its claims against the debtor Inland Gas Corporation be accorded full recognition." (R. I, 496.) Thus the issue was sharply drawn as to whether or not Columbia's claims were illegally acquired and used and whether or not Columbia's conduct had been inequitable and to the detriment and injury of Inland. The District Court found the numerous facts contained in its Findings. See Appendix "A". The District Court also made certain conclusions of law in which it found the following principles were applicable and controlling, inter alia:

> "Equity will not permit one to rely on his wrongful act as against those affected by it, but not participating therein, to support his own asserted legal title."

* * *

"Under the facts in this record no principle of equity, morals or law requires the court to approve the present claims or stock interests of the Columbia and this court should not lend its aid to further a scheme abhorrent to all recognized rules of right and justice as the facts here show." (R. I, 602.)

Columbia's question ignores (1) the fact that the violation of the anti-trust laws directly affected Inland; (2) that Inland was injured and damaged by Columbia's violations of the anti-trust laws; and (3) that Columbia's inequitable conduct, entirely separate and apart from the violations of the anti-trust laws, caused injury and damage to Inland and its innocent security holders.

III. Columbia's Point I, That "The Judgment of the Court Below Was Erroneous Because it Inflicted a Penalty Upon Columbia Which is Not Prescribed by the Federal Anti-Trust Statutes", is Not Applicable, Because What the Court Did Below Was Simply to Apply the Unclean Hands Doctrine After Finding That Columbia Had Acted Illegally and Inequitably With Respect to the Matter in Controversy.

Columbia's Point I in support of the question it seeks to present ignores the nature of the proceedings below. The same point was strenuously urged before the District Court and before the Circuit Court of Appeals. In its Opinion the Circuit Court of Appeals answers it completely, viz.:

"The argument that the court, for alleged violations of the Anti-Trust Laws, imposed in a bankruptcy proceedings penalties other than those specified in the Anti-Trust Statutes, must be rejected. The court imposed no penalties; it but exercised its equity power to deny relief to a creditor seeking enforcement of contracts entered into illegally or tainted with inequity. To apply the doctrine so vigorously urged by Columbia,

is to deny the power and duty of equity, to reject demands arising out of illegal or inequitable conduct whenever such conduct is subject to legal penalties imposed by state or federal law, and so to limit it to that narrowly restricted field in which the chancellor may sense inequity even in the absence of statutory condemnation. A denial of this contention does not mean, of course, that the power may be invoked in respect to conduct constituting no wrong to the parties or interests in litigation." (R. IX, 21.)

The Circuit Court of Appeals also answered Columbia's contention that the decision conflicts with the decision of this Court in the *Hartford-Empire Co.* case, viz.:

"In our view, Columbia receives no support from the case of *Hartford-Empire Co. v. U. S.*, 323 U. S. 386, wherein it was held that the use of patent positions to allocate fields of manufacture and to maintain prices, violated the Anti-Trust Laws and could be restrained, but that the court was without power to compel action, which amounts to a forfeiture of patents. Columbia correctly points out that there is no distinction between a patent and a bond; both are a species of property and neither can be confiscated because of past uses. But its contention in other respects ignores the fundamental basis of the *Hartford-Empire* decision which, in line with *Morton Salt v. Suppiger* and *B. B. Chemical Co. v. Ellis*, supra, denies enforcement of patent rights against infringers, so long as the patent owner is using his patent in violation of the Anti-Trust Laws. It may well be, under the facts of the *Hartford-Empire* case, that there remained to the appellants there, property rights which, when their owners had abandoned their illegal use and been purged of inequity, could still be enforced against subsequent infringers. Such rights the court would not allow to be confiscated. This doctrine has no application to the present status of Colum-

bia, at least in respect to the subordination of its claims by the decree. In that respect the decree merely denies enforcement of the Columbia claims precisely as the *Hartford-Empire* decision denies enforcement of patents illegally used against those infringing during such illegal use. The fruits of Columbia's inequitable activities are still retained in its freedom from competition by American Fuel, and Columbia's suggested remedy would still leave wronged stockholders and creditors without relief, for a restoration of the *status quo ante* is manifestly now impossible." (R. IX, 21-22.)

In other words, as the Circuit Court of Appeals pointed out, what was done in this case was to deny to Columbia the affirmative relief it was seeking because it was in Court with unclean hands with respect to the matter in controversy. The Circuit Court recognized that the proceedings were not proceedings against Columbia seeking any affirmative relief and certainly not proceedings against Columbia to enforce any penalties or to seek confiscation of its property. Columbia does not want to recognize the true nature of these proceedings. All of the other cases cited by Columbia under its Point I, except possibly that of *Standard Oil Co. v. Markham*, 61 F. Supp. 813, are of the same kind, and differ from the instant case on this very point which involves the nature of equitable jurisdiction. Equity is unable in many situations to grant affirmative relief against a wrongdoer, but when that wrongdoer comes into Court seeking the aid of Equity, and the wrong which he has done is connected with the matter in controversy, the Court can deny him relief. *Precision Instr. Mfg. Co. v. Automatic M. Mach. Co.*, 324 U. S. 806, at 814, 89 L. ed. 1381, at 1386.

The case of *Standard Oil Co. v Markham*, 61 F. Supp. 813, is inapplicable as it merely illustrates a limitation upon the principle that one who seeks affirmative relief must not come into Court with unclean hands, which is stated in 2 *Pomeroy, Eq. Jur.*, § 399, as follows:

"The maxim, considered as a general rule controlling the administration of equitable relief in particular controversies, is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction; it does not extend to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party has no concern. When a court of equity is appealed to for relief it will not go outside of the subject-matter of the controversy, and make its interference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant, or the relief which he demands."

That it was the intention of the District Court in the *Standard Oil Co.* case to apply this rule is found not only in the distinction which the Court draws between cases where the illegal act was connected with the matter in controversy and where the illegal act was not,[6] but also in the Court's specific reference to the fact in the original opinion that the plaintiffs were no longer involved in anti-trust activities in connection with the subject matter, and hence the Alien Property Custodian could not urge a prior violation of law as a defense. Upon reconsideration the Court specifically pointed out this distinction by stating that there was no longer any law violation involved and that the rights

[6] The District Court said the case was quite unlike that of *Continental Wall Paper Co. v. Louis Voight & Sons Co.*, 212 U. S. 227, 53 L. ed. 486, where this Court said it would not lend its aid to a plaintiff where an anti-trust violation was found to be connected with the matter in controversy. The District Court then said that the distinction between such a case and one where the illegal act was not connected with the matter in controversy was "too familiar to require elaboration. See A. B. Small Co. v. Lamborn & Co., * * *." 267 U. S. 248, 69 L. ed. 597.

being asserted, if granted, would not aid in "the current carrying out of an unlawful plan." Furthermore, the Court held definitely that the prior illegal acts were not connected with the matter in controversy. The Court said that what was at issue was the status of property and "When a question of the status of property rights is at issue an inquiry as to whether the status was acquired in violation of a statute is irrelevant and collateral unless the statute otherwise provides."

In the instant case the status of Columbia's claims is not as issue, but what is at issue is whether Columbia can participate in any proposed reorganization on a parity with innocent claims. Columbia brought about the receivership which later materialized into the reorganization proceedings. (R. I, 116, 120.) That its illegal acts in acquiring and using the claims are relevant and not collateral, and that if Columbia is allowed to participate on a parity with others, Columbia could carry out its original unlawful plan, becomes evident from a consideration of exactly what Columbia has.

Inland has outstanding $4,254,700 principal amount of its bonds. (R. I, 178.) Columbia's total purchases were $1,596,600. (R. I, 358, 527.) This gave Columbia a total of 37.52+% of the outstanding bonds.

The proceedings below are under the corporate reorganization provisions of the Bankruptcy Act. (11 U. S. C. A. 501-676.) In order to have any plan of reorganization confirmed by the Court, two-thirds in amount of the claims filed and allowed of each class, with certain exceptions, would have to accept the plan. (11 U. S. C. A. 579 and 621.) [7]

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[7] The pertinent provisions of these two sections are as follows:

§ 579. Acceptance of Plan; Hearing for Confirmation

After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in

This means that if Columbia's bonds participate, *it will continue to have power to govern any reorganization of Inland.* Columbia's purchases were made in sufficient amounts to give it the power to control and govern any plan of reorganization. The total of 37.52+% was Columbia's idea of the amount needed. If Columbia's bonds are allowed, Columbia could block the confirmation of any plan and thereby continue Inland in trusteeship or force its liquidation through the Bankruptcy Act. (11 U. S. C. A. 636.) [8]

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amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 603 of this title, or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of section 616 of this title, the judge shall fix a hearing, upon notice to the debtor, creditors, stockholders, indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the judge may designate, for the consideration of the firmation of the plan and of such objections as may be made to the confirmation. July 1, 1898, c. 541, § 179, as added June 22, 1938, c. 575, § 1, 52 Stat. 892.

§ 621. Confirmation by Court

The judge shall confirm a plan if satisfied that—

(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this title.

[8] The pertinent provisions of this section are as follows:

§ 636. Failure to Effectuate Plan or Consummation

If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

Columbia still stands by with bonds it would have this court validate which are sufficient in amount to govern and control the final disposition of the Inland properties. *It secured these for that purpose and would now have this court hold that it can consummate the conspiracy through these securities.*

Columbia put Inland in receivership to eliminate the completion and has stood by with sufficient bonds since 1930 to prevent any reorganization not to Columbia's liking. Certainly the doctrine of unclean hands was correctly applied by the courts below in refusing, as the District Court said, "to lend its aid to further a scheme abhorrent to all recognized rules of right and justice as the facts here show."

The maxim which, we submit, applies and was correctly applied has recently been commented upon by this Court in language most apt and most decisive in these proceedings. In the case of *Precision Instr. Mfg. Co. v. Automatic M. Mach. Co.*, 324 U. S. 806, 89 L. ed. 1381, this Court said, at page 1386:

> "The guiding doctrine in this case is the equitable maxim that 'he who comes into equity must come with clean hands.' This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been

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(2) Where the petition was filed under section 528 of this title, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders. July 1, 1898, c. 541, § 236, as added June 22, 1938, c. 575, § 1, 52 Stat. 899.

the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abettor of iniquity.' Bein v. Heath, 6 How (U. S.) 228, 247, 12 L. ed. 416, 424. Thus while equity does not demand that its suitors shall have led blameless lives,' Loughran v. Loughran, 292 U. S. 216, 229, 78 L. ed. 1219, 1226, 54 S. Ct. 684, as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue. Keystone Driller Co. v. General Excavator Co., 290 U. S. 240, 245, 78 L. ed. 293, 296, 54 S. Ct. 146; Johnson v. Yellow Cab Transit Co., 321 U. S. 383, 387, 88 L. ed. 814, 818, 64 S. Ct. 622; 2 Pomeroy, Equity Jurisprudence, 5th ed. §§ 397-399.

"This maxim necessarily gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant. It is 'not bound by formula or restrained by any limitation that tends to trammel the free and just exercise of discretion.' Keystone Driller Co. v. General Excavator Co. supra (290 U. S. 245, 246, 78 L. ed. 296, 297, 54 S. Ct. 146). Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor.

"Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoy-

ing the fruits of his transgression but averts an injury to the public. The determination of when the maxim should be applied to bar this type of suit thus becomes of vital significance. See Morton Salt Co. v. G. S. Suppiger Co., 314 U. S. 488, 492-494, 86 L. ed. 363, 365, 367, 62 S Ct. 402."

In *Deweese v. Reinhard,* 165 U. S. 386, 17 S. Ct. 340, 341, 41 L. ed. 757, this Court said:

> "A court of equity acts only when and as conscience commands; and, if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity."

As the judgments of the two Courts below were that since Columbia's acts violated the law and were inequitable with respect to the matter in controversy, it could not participate on an equal footing with innocent creditors, the Courts below merely applied the unclean hands doctrine and there is no reason why their judgments should be reviewed by this Court, and none of the reasons relied on by Columbia for the allowance of the writ, as set forth on page 20 of its Petition, are applicable.

IV. Re: Columbia's Point II, That "The Penalty Imposed Below, in the Absence of Injury to the Interests of Other Security Holders Resulting From Columbia's Purchase of American Fuel Securities, Was Beyond the General Equity Powers of the Court."

Again we find that Columbia is reluctant to admit the essential nature of the action taken by the Courts below. No penalty was imposed below as Columbia urges, but instead, as we pointed out above, the Courts merely refused the prayer of Columbia's Answer that "its claims against the debtor Inland Gas Corporation be accorded full recognition." (R. I, 496.)

However, the complete answer to Columbia's Point II is that injury *was* inflicted upon Inland and its innocent security holders.

Although the record shows that Inland and its innocent security holders were injured, we submit that even if no injury had occurred or could be shown to have been inflicted upon Inland or its innocent security holders, nevertheless the Courts below were justified in refusing to lend their aid to Columbia. In *Precision Instr. Mfg. Co. v. Automatic M. Mach. Co.*, 324 U. S. 806, at 814, 89 L. ed. 1381, at 1386, this Court pointed out that in applying the unclean hands doctrine it is the plaintiff's conduct and not the defendant's status which governs. This Court said:

> "This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant."

In *Bell & Howell Co. v. Bliss*, 262 Fed. 131, at 135, the Court said:

> "The complainant, entering a court of equity, must come with clean hands. Nor is this court, as argued by counsel for appellees, limited, in applying this maxim, to a case where the iniquitous action is one of which the moving party may personally complain. The rule thus invoked need not be pleaded at all. In fact, it is not a matter of defense primarily. Courts apply it, not to favor a defendant, but because of the interest of the public; courts act sponte sua. 10 R. C. L. 390; Memphis Keeley Institute v. Leslie E. Keeley, 155 Fed. 964, 84 C. C. A. 112, 16 L. R. A. (N. S.) 921; Weeghman et al. v. Killifer et al., 215 Fed. 289, 131 C. C. A. 558, L. R. A. 1915A, 820; Larscheid v. Kittell, 142 Wis. 172, 125 N. W. 442, 20 Ann. Cas. 576."

In *Sharpless-Hendler Ice Cream Co. v. Davis,* 17 Del. Ch. 161, 151 A. 261, at 262, the Court said:

> "It is not essential that the party in whose favor the rule of the maxim will operate must be one who is himself entitled to complain, for the rule is not one of defense and need not be pleaded. Bell & Howell Co. v. Bliss (C. C. A.) 262 F. 131. It is a rule that lays restrictions upon complainants, and tells them that an appeal for relief to a court of conscience will not be honored by one who has himself been guilty of unconscionable conduct. It was in harmony with this view that the case of Rentoul v. Sweeney, 15 Del. Ch. 302, 137 A. 74, was decided holding that one who had conveyed land for the purpose of defrauding a creditor had no standing in equity to secure a reconveyance, a sort of case in which it is manifest that the maxim's application could in no sense be said to operate in response to an assertable complaint on the part of the defendant."

The most familiar type of case in which the maxim is applied, although the inequitable conduct cannot be shown to have injured the defendant, is, as the Delaware Chancellor pointed out, where a plaintiff has transferred property to a defendant, without consideration, in order to hide the property from his creditors, and then the plaintiff sues to impress a trust on the property, after the danger from his creditors has passed. The Courts uniformly refuse to lend aid although, of course, plaintiff's act in making the transfer did not injure the defendant. See numerous cases collected at 4 *A. L. R.* 100-101.

We recognize, however, that many Courts have said that injury to the defendant must be shown before the maxim is applicable. The Circuit Court of Appeals below recognized this latter view, saying:

> "To sustain the judgment below the appellees must have proved not only inequitable or illegal conduct, but

that the debtors, their stockholders or public creditors were injured thereby." (R. IX, 15.)

After adopting the view that the bankrupts or their public creditors must have been injured in order for the maxim to apply, the Circuit Court reviewed the record and came to the conclusion that Columbia's acts had injured the bankrupts and their creditors other than Columbia. (R. IX, 20-21.) The Circuit Court's opinion deals with the three companies, not specifically with Inland, in its conclusion that all of the three companies and their innocent creditors were injured. That the Circuit Court was right, particularly with respect to Inland and its innocent creditors, is apparent from the following:

A. *The Findings of the District Court, Which Columbia Does Not Challenge, Show Injury to Inland and Its Innocent Creditors.*

Finding #6 shows that Inland had a competitive advantage over the Columbia subsidiaries. Finding #7 shows that Columbia determined to inaugurate measures to combat Inland's competition. Finding #10 shows the organization of a syndicate having for its purpose the securing of capital to bridge over the financial difficulties encountered by 1930 and "to finance a large expansion of its business." This Finding also shows that the large expansion of business called for the building of a natural gas pipe line to Detroit. This Finding then shows that:

> "This syndicate constituted a sufficient combination of financial strength and business experience to foreshadow success of the proposed plans and thereby prevent the impending financial collapse of the American Fuel System as anticipated by Columbia."

Finding #12 shows that Columbia, realizing its own plans were "seriously threatened by the plans of the syndicate," covertly bought Inland bonds until it gained "a command-

ing position." Finding #13 shows that Columbia purchased stock control of Inland and by use of certain claims "promptly precipitated receivership proceedings against Inland * * * which resulted in having them (it) placed in the hands of Columbia's nominee, W. E. Lockhart, as receiver. This resulted in immediate discontinuance of all efforts to promote the Detroit project, and *in curtailment of further extension of the subsisting competition between the subsidiaries of Columbia and American Fuel.*" (Italics supplied.) Finding #15 states, inter alia:

> "But for the consummation of this transaction, the Syndicate was ready, able and willing to continue its efforts to develop the project. Whether it would have ultimately succeeded is a matter which lies entirely in the realm of speculation." (R. I, 600.)

Finding #17 reads:

> "On and prior to January 1, 1930, and continuing throughout the year 1930 and thereafter, Columbia, together with its executive officers, directors and certain of its corporate subsidiaries, was engaged in a conspiracy, the object, purpose and effect of which was to restrain and monopolize trade and commerce in natural gas in and between the states of Kentucky, Ohio, West Virginia, Indiana and Michigan, and the claims herein presented and asserted by and on behalf of Columbia against the debtors, American Fuel, Inland and Kentucky Fuel, were acquired pursuant to and in accomplishment of the aims and purposes of that conspiracy. Any plans to acquire and utilize the properties of the American Fuel System as a legitimate adjunct to the Columbia System were merely collateral and incidental to the main purpose of the conspiracy to restrain actual and potential interstate competition in the production, transportation, distribution and sale of natural gas."

Based upon the foregoing Findings the District Court concluded the anti-trust laws had been violated and that

"Equity will not permit one to rely on his wrongful act *as against those affected by it,* but not participating therein, to support his own asserted legal title." (R. I, 602.)

From the foregoing, we submit, the District Court found injury to Inland. It found that Inland had a competitive advantage over Columbia's subsidiaries, which Columbia determined to combat and terminate; that a syndicate came forward to finance Inland through the early stages. The Finding that Inland had a competitive advantage and was expanding at Columbia's expense implies that with the Syndicate's financial aid Inland might have become prosperous. The Findings then show that through Columbia's purchases it was successful in causing the discontinuance of the Detroit project, which would have aided Inland in giving Inland an additional market for its gas, but, what is more important, the Finding is specific that the acquisition by Columbia of Inland's securities and Columbia's act in placing Inland in receivership resulted "in curtailment of further extension of the subsisting competition between the subsidiaries of Columbia and American Fuel" (Inland). This is a definite finding that Columbia stopped Inland from extending its business and implies as a finding that Columbia stopped Inland from becoming prosperous. The Finding that the Detroit project was speculative but was terminated by Columbia is one which shows that Columbia destroyed the opportunity for Inland to become prosperous through the sale of gas in connection with the Detroit project. Finally, Finding #17 is one showing definite injury to Inland in that it is a finding that Columbia conspired "to restrain and monopolize trade and commerce in natural gas" in Inland's territory. This of course means that Columbia was seeking illegally to prevent Inland from selling natural gas. And then we have the District Court's statement that the wrongful acts were against those affected, which of course is a conclusion, really of fact, more than of law, that Columbia's wrongful acts adversely affected Inland.

Columbia's tenuous argument that because the District Court did not make a specific finding of injury, it made no finding of injury to Inland, is refuted by the above, we submit.

The Circuit Court of Appeals reviewed the entire record and concluded that Inland and its innocent creditors were injured and adversely affected by Columbia's wrongful acts. (R. IX, 20-21.) Such conclusion is further answer to Columbia's position.

B. *The Undisputed Facts in the Record Upon Which the Court's Broad, General Findings Were Based, Show the Detail of the Injury to Inland and Its Innocent Creditors.*

Cullman Exhibit 1-A (Appendix "B" hereto), probably demonstrates better than anything else in the record the extent to which Columbia's actions injured Inland and its innocent security holders. This shows that in the short period of Inland's existence prior to 1930, when it had the competitive advantage over Columbia's subsidiaries, it and its associates took 38 industrial customers, whose total annual gas consumption was 5,926,778 mcf., away from Columbia. Additional customers were taken prior to November 6, 1930, when Columbia's nominees were placed upon the Boards of Inland and its associates. From the date Columbia's nominees assumed control of Inland and its associates, and for a period of four years thereafter, *not a single customer was taken by Inland* or any of its associates from Columbia's subsidiaries. This Exhibit demonstrates that the District Court's Finding that Columbia's actions resulted "in curtailment of further extension of the subsisting competition between the subsidiaries of Columbia and American Fuel" is a mild understatement.

As pointed out supra, p. 17, the competitive advantage which Inland enjoyed ended with the appointment of receivers. Let us look then to see whether this loss of a competitive position cannot be attributed solely to Colum-

bia, and thus show that Columbia injured Inland and its innocent security holders by taking away from Inland the competitive advantage which it had and which would have enabled it to take all of Columbia's industrial customers. See supra, p. 5. When Columbia obtained stock control of Inland, Inland had no "pressing obligations" *and no creditors were in a position to file a receivership Bill.* (R. II, 500.) We have set forth in detail the corrupt and illegal manner used by Columbia to have receivers appointed for Inland. See supra, pp. 10 to 12. We thus find that Columbia wrongfully and corruptly took steps to put Inland in receivership, which injured Inland, and, of course, bondholders of a corporation improperly placed in receivership certainly suffer injury. Furthermore, as pointed out above, supra, pp. 25 to 27, Columbia has been in a position since 1930 to control and govern any reorganization. Again injury to bondholders is apparent. Again we say that the District Court used mild language when it concluded that Inland was "affected" by Columbia's wrongful acts.

In 1930, when Columbia determined to obtain a commanding position over Inland through the purchase of its securities, Inland, although not earning its bond interest, was making financial progress. Its gross income increased $104,844 in 1929 over 1928 and $78,231.08 in 1930 over 1929, or a total of $183,075.08 in the two-year period after the pipe line was completed. It had no "pressing obligations" at the time Columbia put it into receivership. (R. II, 500, 514-520; IV, 1571.) In 1931 Inland's income was $128,-219.44 *less* than in 1930. The upward curve turned downward after Columbia bought control. *Columbia cannot escape from the import of the reversal of income after it obtained control.* Not only was Inland making financial progress through its competitive advantage over Columbia, which enabled it to take Columbia's customers and gave it hope of taking all of Columbia's industrial customers, but it had a financial angel in the Syndicate. As the District

Court found, the Syndicate was formed to secure capital to bridge over the immediate difficulties and the Syndicate had sufficient strength to foreshadow success and prevent any impending financial collapse. In other words, Inland was small, but struggling upward and had every reason to look forward to a successful future. COLUMBIA ENDED THAT. Now Columbia naively urges that it didn't hurt Inland or its innocent security holders.

The future Inland would have enjoyed after 1930, but for Columbia's activities, cannot be recast. The record shows that a situation has resulted wherein Inland's asset value is not now equal to the outstanding bonds, meaning that all security holders have been injured. The instant situation is almost exactly as that found by this Court in *Taylor v. Standard Gas & Electric Company*, 306 U. S. 307, 83 L. ed. 669 (the Deep Rock case), where the contention was made that, as the amount of the debt which Standard offered to make the basis of its claim in compromise represented items, after eliminations, which could not be questioned and which involved no wrongdoing, none of the preferred stockholders would be injured. This Court said:

> "It is impossible to recast Deep Rock's history and experience so as even to approximate what would be its financial condition at this day had it been adequately capitalized and independently managed and had its fiscal affairs been conducted with an eye single to its own interests."
>
> (306 U. S. 307 at 323, 83 L. ed. 669, at 677.)

Due to the fact that the probabilities were that, but for Standard's actions, Deep Rock would have been in better financial condition this Court subordinated all of Standard's claims.

Due to the fact that the facts here show that undoubtedly, but for Columbia's activities, Inland would be in much better financial condition, the Columbia claims were properly subordinated, regardless of proof of specific damage. Certainly injury is apparent.

Furthermore, the numerous details set forth supra, pp. 3 to 18, show that Columbia's plan was a wrongful one and was one to destroy Inland. It succeeded.

CONCLUSION.

As the Courts below acted unanimously and in harmony with all similar Federal and State decisions in applying the unclean hands doctrine to a situation found crying for it, there is no reason for this Court to review what was done, and, therefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ARTHUR G. LOGAN,
Continental American Building,
Wilmington 33, Delaware,
Attorney for Russell Van Horn, et al., as a Committee for Bondholders of Inland Gas Corporation.

ROBERT J. BULKLEY,
Bulkley Building,
Cleveland 15, Ohio,
RICHARD B. HAND,
111 Broadway,
New York 6, N. Y.,
Of Counsel.

APPENDIX A.

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF KENTUCKY.

In Bankruptcy No. 115 Lexington.

IN THE MATTER OF AMERICAN FUEL AND POWER COMPANY, ETC.,
Debtors.

In Bankruptcy No. 989-B Lexington.

IN THE MATTER OF INLAND GAS CORPORATION,
Debtor.

In Bankruptcy No. 991-B Lexington.

IN THE MATTER OF KENTUCKY FUEL GAS CORPORATION,
Debtor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Filed Sept. 3, 1943. R. I, 590-603.)

These causes having been heard together and being submitted upon the several petitions filed herein seeking rejection of the claims asserted in these proceedings by Columbia Gas and Electric Corporation against the Debtors, American Fuel and Power Company, Inland Gas Corporation and Kentucky Fuel Gas Corporation, respectively, and the Court having heard and considered the evidence presented by the parties bearing upon the issues involved, specially finds the Facts and separately states its Conclusions of Law thereon, as follows, to-wit:

FINDINGS OF FACT.

1. The debtor, INLAND GAS CORPORATION (hereinafter called INLAND) was incorporated on March 31, 1927, for the purpose of engaging in the business of producing, transporting and selling natural gas to industrial consumers. The enterprise was entirely financed by the sale of its securities to the public, the proceeds from which, after the payment of large financing and promotional expenses, it used to acquire natural gas reserves in Eastern Kentucky and to construct a transmission line from its gas fields to Ashland, Kentucky. In 1927, it issued and sold its 7% First Mortgage Bonds in the principal amount of $1,000,000 and an issue of 7% cumulative preferred stock with an aggregate par value of $200,000. In 1928, it issued and sold its 6½% First Mortgage Sinking Fund Bonds, maturing February 1, 1938, in the principal amount of $4,400,000 and its 7% Ten Year Debentures in the principal amount of $1,500,000. These securities were underwritten and sold to the public by a group of investment bankers. From the net proceeds derived from the 1928 financing, the corporation retired the securities issued in 1927. The entire issue of its common stock consisting of 341,775 shares was acquired by the promoters and underwriters as compensation for services. The underwriters also received for their services from 10 to 12 percent of the proceeds derived from the securities. The net returns to the corporation were further depleted by other promotional expenses. In 1930 it sold to the American Fuel and Power Company its 6% Gold Notes in the principal amount of $400,000.

2. The debtor, KENTUCKY FUEL GAS CORPORATION (hereinafter called KENTUCKY FUEL) was incorporated on May 17, 1928, primarily for the purpose of supplementing the business of INLAND by the acquisition of certain natural gas producing property located in Eastern Kentucky, then owned by American Rolling Mill Company. The organization was promoted by the same persons who promoted INLAND and likewise was entirely financed by the sale of

securities to the public, consisting of 6½% First Mortgage Sinking Fund bonds maturing June 1, 1942, in the principal amount of $4,000,000 and 6½% Sinking Fund Debentures maturing June 1, 1938, in the principal amount of $1,000,000. These securities were marketed by some of the same group of bankers who financed INLAND and upon the same terms. The common stock of the company, apportioned among the promoters and underwriters, consisted of 500,000 shares. Out of the net proceeds derived from the sale of these securities the corporation paid $3,000,000 to the American Rolling Mill Company for its gas acreage.

3. The debtor, AMERICAN FUEL AND POWER COMPANY (hereinafter called AMERICAN FUEL) was organized in July 1928 by the same group who promoted INLAND and KENTUCKY FUEL for the purpose of taking over and holding the stock of these operating corporations and others planned to be organized, in order to integrate and expand their operations through unified control and management. The stockholders of INLAND and KENTUCKY FUEL exchanged their stock, share for share, for stock in this holding company. As of July 1, 1929, it issued and sold to the public 7% Convertible Gold Notes in the principal amount of $2,000,000 maturing July 1, 1934. It used the net proceeds derived from the sale of these notes to provide financial aid to INLAND and KENTUCKY FUEL, and to acquire additional natural gas acreage and transmission lines. It caused the organization of and financed additional subsidiary corporations for the purpose of having them acquire, hold and operate various properties, as follows, to-wit:

(a) Carbreath Gas Company, which acquired and held gas acreage in Southeastern Kentucky, together with gas gathering lines and equipment;

(b) Inland Gas Distributing Company, which constructed, held and operated a gas transmission line extending from Ashland, Kentucky, into Huntington, West Virginia, by means of which it transmitted nat-

ural gas purchased and received into its line from INLAND at Ashland, Kentucky, to industrial consumers in Huntington and Kenova, West Virginia and vicinity;

(c) Buckeye Fuel Company, which held leases upon gas producing acreage in Lawrence County, Ohio, from which it supplied gas to Buckeye Gas Service Company;

(d) Buckeye Gas Service Company, which owned gas distributing lines in Ironton and Coalgrove, Ohio, by which it sold and distributed to industrial consumers gas supplied by Buckeye Fuel Company and KENTUCKY FUEL, and

(e) Kentucky Drilling Company, which was principally utilized to carry on drilling operations.

As the parent corporation, AMERICAN FUEL, held all the capital stock of these subsidiaries, and with them, together with INLAND and KENTUCKY FUEL, made up the so-called "American Fuel System".

4. During the period covered by the events involved in this litigation, COLUMBIA GAS AND ELECTRIC CORPORATION (hereinafter called COLUMBIA), through its numerous owned and controlled subsidiary corporations, engaged in the production, transmission, distribution and sale of natural gas to both industrial and domestic consumers in Kentucky, West Virginia, Ohio, Indiana and other states. With its subsidiaries connected by interstate transmission lines and integrated through unified control of management and operation, it constituted a huge unitary interstate enterprise generally known as the "Columbia System".

5. COLUMBIA's subsidiaries, which were engaged in selling fuel gas, served both domestic and industrial consumers as public utilities, and hence were subject to the rules and regulations of State Public Utility Commissions as well as the provisions of municipal franchises under which they operated. The result was they could not contract with industries for continuous service or fixed rates over a

period of years by reason of the power of state and municipal authorities to change their rates from time to time and to require them to give preference to domestic consumers over industrial consumers when, by reason of cold weather or other conditions, the supply of natural gas was insufficient for both. Service to industries constituted a substantial part of their business.

6. The subsidiaries of AMERICAN FUEL served only industrial users under private agreements. All plans for expansion and development of the American Fuel System were projected upon a strict adherence to that policy. By so limiting operations, they were free from the handicap of municipal franchises and regulation by utility boards and commissions. Consequently they had a substantial competitive advantage over COLUMBIA's subsidiaries wherever, operating in the same territory, they came into competition with each other for the business of industrial consumers.

7. Prior to the organization of the American Fuel System, COLUMBIA enjoyed virtual freedom from actual or threatened competition of a serious nature in the fields occupied by its subsidiaries in the states of Kentucky, Ohio and West Virginia. During the years 1928, 1929 and until November 1930, AMERICAN FUEL and its subsidiaries engaged in actual competition in interstate commerce of a substantial nature with COLUMBIA and certain of its subsidiaries in the production, transmission and sale of natural gas to industrial consumers in the states of West Virginia, Kentucky and Ohio, and also in the acquisition of natural gas acreage in the gas fields of Eastern Kentucky. As a result of the competitive advantage enjoyed by AMERICAN FUEL it was able to and did take away from COLUMBIA the American Rolling Mill Company, the largest industrial customer of one of its subsidiaries in Kentucky, and many of the largest industrial customers of its subsidiary in Huntington, West Virginia, and vicinity. By the end of

1929, this competition had become so serious and threatening as to cause COLUMBIA to consider and inaugurate measures to combat it.

8. During 1929-30, COLUMBIA was engaged in the development of a plan for the construction of a pipe line for transmission of natural gas from its Kentucky-West Virginia fields to the eastern seaboard cities of Washington, Baltimore and Philadelphia (hereinafter referred to as The Seaboard Line). This project, as originally planned, called for a large increase in COLUMBIA's holdings of gas reserves in West Virginia and Eastern Kentucky and to that end COLUMBIA entered upon a large scale program for increasing its gas acreage in that territory. It considered that the gas acreage held by AMERICAN FUEL and its subsidiaries would be a desirable adjunct to its system.

9. Both INLAND and KENTUCKY FUEL sustained substantial operating losses in 1928 and 1929. Due to their heavy burden of securities and burdensome gas contracts entered into with Hamilton Gas Company and Piney Oil and Gas Company, INLAND, KENTUCKY FUEL and AMERICAN FUEL were never able to earn their fixed charges. COLUMBIA acquired knowledge of the precarious financial position of AMERICAN FUEL and its subsidiaries, and that the indentures securing the bonds of INLAND and KENTUCKY FUEL provided that after their failure to meet interest or sinking fund requirements, upon the request of the holders of 25 percent in principal amount of the bonds, the indenture trustees should declare defaults to have occurred and institute foreclosure proceedings. Anticipating such eventuality and in order to place itself in a position to force foreclosure and sale of the properties and afford it an opportunity to purchase them at a foreclosure sale, in January 1930, COLUMBIA began to purchase bonds of INLAND and KENTUCKY FUEL on the open market by methods which concealed the fact that it was the purchaser. By the end of April 1930, it had acquired in excess of 25 percent in principal amount of the bonds of both.

10. From the beginning of their operations, INLAND and KENTUCKY FUEL were under the supervision and management of Hope Engineering Company (hereinafter called "Hope"), an organization with wide experience in building natural gas transmission lines and successfully promoting natural gas enterprises. It recognized the dubious financial condition of AMERICAN FUEL and its subsidiaries and realized that its only hope of survival was to secure capital to bridge over its immediate difficulties and to finance a large expansion of its business. It considered the industrial area in and around the city of Detroit, Michigan, which was not then supplied with natural gas, an inviting field, and recommended to AMERICAN FUEL that an effort be made to enter this field. Plans to that end were promptly formulated. "Hope" succeeded in inducing American Utilities and General Corporation and Moody-Seagraves Company to join in the promotion of the project, as the result of which this group (hereinafter referred to as "The Syndicate") united their resources and combined their efforts in an ambitious plan to construct a natural gas transmission pipe line extending from the gas fields of Eastern Kentucky through the heart of the territory then occupied and served by the subsidiaries of COLUMBIA to the city of Detroit for sale and distribution of natural gas to industrial enterprises along the way, as well as in the Detroit industrial area. The American Utilities and General Corporation was a prosperous and successful investment trust backed and controlled by G. E. Barrett & Company, a strong banking organization which had financed many gas enterprises throughout the country. Moody-Seagraves Company was an organization which had successfully built and operated natural gas projects and enjoyed wide experience in the promotion of such enterprises. This Syndicate constituted a sufficient combination of financial strength and business experience to foreshadow success of the proposed plans and thereby prevent the impending financial collapse of the American Fuel System as anticipated by COLUMBIA.

The Syndicate acquired from Freeman, Smith & Camp Company voting trust certificates representing 450,000 shares of AMERICAN FUEL stock and AMERICAN FUEL notes in the principal amount of $60,000, for all of which it paid $154,000. It also acquired from AMERICAN FUEL 1,000,000 shares of its newly issued common stock for which it paid $500,000. These acquisitions gave the Syndicate, as owner of the majority of its outstanding stock, complete control of the American Fuel System. To prevent default in certain maturing obligations of AMERICAN FUEL, INLAND and KENTUCKY FUEL, "Hope" agreed to provide funds sufficient to meet their immediate sinking fund requirements. Operations of the Syndicate were carried on by and through corporations which it wholly owned and controlled, to-wit: Northern Gas Company, an Ohio corporation, Northern Industrial Gas Company, a New York corporation, Howe Oil and Gas Company, and Northern Gas Company, a Delaware corporation. Through one of its corporations, the Syndicate applied for a franchise to lay its gas pipe lines in the streets of the city of Detroit and entered upon a vigorous campaign to secure contracts from industrial consumers in the city of Detroit and vicinity, as well as in the territory through which the proposed gas line would be constructed. Through another of its corporations, it surveyed and acquired the right of way for its transmission line from the gas fields of Eastern Kentucky, including the necessary permits for river crossings, and started the work of laying pipes under the Ohio River. Through another of its corporations, Howe Oil and Gas Company, it started the acquisition of additional gas acreage in the Eastern Kentucky fields to supplement the holdings of the American Fuel System.

The Syndicate planned to provide the money necessary to advance the project to a point where its successful completion and profitable operation could be demonstrated and then sell to the public a bond issue sufficient to finance completion. Contracts for the sale of natural gas were

secured from industrial consumers not only in the Detroit area but in the territory adjacent to the proposed line. Ralph K. Davis, a nationally known and highly reputable natural gas engineer, was employed to investigate and analyze the proposed enterprise and, after making an exhaustive survey of it in its entirety, he reported: "* * * the gas reserves are sufficient, the industrial market is adequate and * * * this project as a whole is a sound business proposition, which will be profitable to the gas company as well as an economic advantage to the industries of Toledo and Detroit."

11. During the time the plans of the Syndicate were maturing, COLUMBIA was also making plans to supply natural gas from its Kentucky and West Virginia fields to the Detroit area. It made a survey of the market in Detroit and, while the application of the Syndicate for a franchise in Detroit was pending, the Executive Committee of COLUMBIA passed a resolution providing for an extension of its existing gas transmission lines from Toledo to Detroit.

12. The plans, which COLUMBIA contemplated for the development of its business in the Detroit field and for the maintenance of its subsisting monopolistic position in fields occupied by its subsidiaries, were not only seriously threatened by the plans of the Syndicate for the development of the American Fuel System, but also by the starting of a large pipe line for the transmission of natural gas from the gas fields of the Texas Panhandle and the Hugoton Gas fields of Kansas which was proposed to be extended into the states of Ohio, Michigan and Indiana and make natural gas available from these sources not only to cities in Indiana and Ohio, which were then supplied by COLUMBIA, but also to the city of Detroit toward which COLUMBIA was looking and planning. Furthermore, United Carbon Company, a corporation which owned gas acreage in Eastern Kentucky, had announced its intention to build a natural gas pipe line from its fields to the city of Cincinnati, Ohio,

for the purpose of supplying gas to that city in competition with COLUMBIA and had proposed to furnish natural gas to a number of COLUMBIA'S customers in the Cincinnati area at a substantially reduced rate. The threat of competition by United Carbon Coompany in the Cincinnati area was averted by COLUMBIA arranging for its subsidiary, Warfield Natural Gas Company, to buy all the gas controlled by United Carbon Company. It met the formidable threat of serious competition from the Texas and Hugoton gas fields of the Southwest by using one of its subsidiaries, Columbia Oil and Gasoline Corporation, to purchase complete control of that project entailing an investment of more than $30,000,000. It continued its efforts to covertly gain a commanding position in the financial structure of the American Fuel System until it acquired approximately 42% of the outstanding bonds and debentures of KENTUCKY FUEL and approximately 36% of the outstanding bonds and debentures of INLAND, representing an aggregate expenditure of between three and four million dollars.

13. On October 30, 1930, COLUMBIA entered into a written contract with the Syndicate (which was consummated on November 6, 1930), under the terms of which, for the consideration of $2,826,789.28, it purchased the Syndicate's entire holdings in the American Fuel System and all other corporations which had been organized by the Syndicate for the promotion and development of its Detroit project consisting of 76% of the outstanding common stock of AMERICAN FUEL and all of the outstanding stock of Howe Oil and Gas Company, Bridge Gas Company, Northern Gas Company (Ohio), Northern Gas Company (Delaware) and Northern Industrial Company, together with all claims and securities held by the members of the Syndicate against AMERICAN FUEL and its subsidiaries. The price paid by COLUMBIA represented the total amount invested by the Syndicate and a clear profit of $350,000. Under the terms of the contract and in consideration thereof, COLUMBIA guaranteed to employ "Hope" to perform natural gas engineering

work on at least $20,000,000 of construction projects within a period of three years, for which it agreed to pay "Hope" a compensation of 4%, an obligation which it later discharged by paying "Hope" $400,000, without any work being done by "Hope". Also under the terms of the contract, the Syndicate delivered resignations of all officers and directors of AMERICAN FUEL and its subsidiaries and the other associated corporations, the stock control of which was acquired by COLUMBIA under the contract, and they were replaced by persons designated by COLUMBIA. Nominees of COLUMBIA were made voting trustees of the majority of the capital stock of KENTUCKY FUEL under a subsisting voting trust agreement. COLUMBIA agreed to hold the members of the Syndicate harmless by reason of the obligation of "Hope" to provide funds to meet sinking fund requirements of INLAND and KENTUCKY FUEL and in respect to any obligations imposed by gas sales contracts entered into with industrial customers in Detroit and elsewhere and from obligations imposed under leases entered into by Howe Oil and Gas Company for gas acreage. It also agreed to hold the Syndicate harmless as to the obligations under INLAND'S gas purchase contracts with Hamilton Gas Company and Piney Oil and Gas Company. By the use of certain claims thus acquired COLUMBIA promptly precipitated receivership proceedings against INLAND and KENTUCKY FUEL which resulted in having them placed in the hands of COLUMBIA'S nominee, W. E. Lockhart, as receiver. This resulted in immediate discontinuance of all efforts to promote the Detroit project, and in curtailment of further extension of the subsisting competition between the subsidiaries of COLUMBIA and AMERICAN FUEL.

14. Negotiations, pursuant to which COLUMBIA acquired from the Syndicate control of the American Fuel System, were inaugurated by O. R. Seagraves, President of Moody-Seagraves Company, whose confidence in the ability of the Syndicate to successfully carry out its plans for the Detroit project had been considerably shaken by reason of the

financial depression throughout the country and the depleted financial strength of the members of the Syndicate by reason thereof. The other members of the Syndicate did not fully share the views of Mr. Seagraves and the principal inducements leading them to agree to the deal with COLUMBIA were the large profits realized from it by them. A collateral inducement to Mr. Seagraves was the prospect of his making a profitable contract with Columbia to take gas from fields located in the Southwest in which he was interested.

15. Prior to the sale of its holdings to COLUMBIA under the contract of October 30, 1930, although the Syndicate was encountering unexpected obstacles and difficulties in the promotion of its plans for the Detroit project, it had not abandoned them and they constituted a sufficient menace and threat to COLUMBIA to induce COLUMBIA to make the deal highly profitable to members of the Syndicate. But for the consummation of this transaction, the Syndicate was ready, able and willing to continue its efforts to develop the project. Whether it would have ultimately succeeded is a matter which lies entirely in the realm of speculation.

16. Prior to COLUMBIA's acquisition of domination and control of the American Fuel System in the manner hereinbefore stated, it had asserted through certain of its responsible executive officers, in substance and effect, that it would not lie idly by and permit the construction of a pipe line through the heart of its territory as proposed by the Syndicate.

17. On and prior to January 1, 1930, and continuing throughout the year 1930 and thereafter, COLUMBIA, together with its executive officers, directors and certain of its corporate subsidiaries, was engaged in a conspiracy, the object, purpose and effect of which was to restrain and monopolize trade and commerce in natural gas in and between the states of Kentucky, Ohio, West Virginia, Indiana

and Michigan, and the claims herein presented and asserted by and on behalf of COLUMBIA against the debtors, AMERICAN FUEL, INLAND and KENTUCKY FUEL, were acquired pursuant to and in accomplishment of the aims and purposes of that conspiracy. Any plans to acquire and utilize the properties of the American Fuel System as a legitimate adjunct to the Columbia System were merely collateral and indicidental to the main purpose of the conspiracy to restrain actual and potential interstate competition in the production, transportation, distribution and sale of natural gas.

CONCLUSIONS OF LAW.

1. The Court has jurisdiction of the parties and the subject matter of this proceeding, and in the exercise of its discretion was empowered to authorize and permit intervention herein by the United States.

2. A conspiracy to violate the Anti-trust Laws of the United States may be established by circumstantial evidence if the circumstances disclosed point unerringly to the existence of such conspiracy and can be satisfactorily explained upon no other reasonable hypothesis. The facts and circumstances disclosed in this case are sufficient, under this test, to warrant the finding of conspiracy as stated in paragraph No. 17 of the Findings of Fact.

3. The conspiracy, pursuant to which COLUMBIA acquired the claims herein asserted against the debtor, as found and described in paragraph No. 17 of the Findings of Fact was in violation of the Anti-trust Laws of the United States, to-wit: The Sherman Act and The Clayton Act.

4. The following conclusions of Law stated by the Circuit Court of Appeals of the Sixth Circuit in its opinion, In re American Fuel and Power Company, 122 F. (2d) 223, are here applicable and controlling, to-wit:

(a) "It is the duty of the Bankruptcy Court in reorganization proceedings to withhold its aid from

parties seeking to obtain a benefit from an agreement tinged with illegality".

(b) "* * * the courts will not lend their assistance in any way toward carrying out the terms of a contract the inherent purpose of which is to violate the law and they likewise will refuse to enforce any right directly springing from such a contract, although such right be legal."

(c) "Equity will not permit one to rely on his wrongful act as against those affected by it, but not participating therein, to support his own asserted legal title."

(d) "The claim of a creditor or the interest of a stockholder which is invalid because it is based on or arises out of an illegal or criminal transaction, is not provable or allowable in bankruptcy reorganizations."

(e) "Under the facts in this record no principle of equity, morals or law requires the court to approve the present claims or stock interests of the Columbia and this court should not lend its aid to further a scheme abhorrent to all recognized rules of right and justice as the facts here show."

5. Judgment should be entered rejecting all claims asserted herein by COLUMBIA against the debtors and adjudging that COLUMBIA take nothing thereby.

/s/ H. CHUBCH FORD,
Judge.

September 3, 1943

APPENDIX B

Statement of the Number of Columbia System Former Customers Obtained by Inland Gas Corporation, Inland Gas Distributing Company, Buckeye Gas Service Company and Kentucky Fuel Gas Corporation, and Annual MCF Sales to These Customers

		Period in which obtained													
	From organization to 1/1/30	1/1/30 to 11/6/30, incl.	11/7/30 to 12/1/30, incl.	12/2/30 to 12/31/30, incl.	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941
Number of former Columbia customers obtained	38	4	.....	.....	.....	.....	3	4	1	2	1	4	.....	1	.....
Annual consumption (MCF):															
Prior to 1930	5,926,787	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1930	2,336,833	63,425	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1931	2,153,798	72,004	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1932	1,824,015	39,448	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
1933	2,495,166	24,486	.....	.....	.....	.....	2,298	.....	.....	.....	.....	.....	.....	.....	.....
1934	2,837,731	56,712	.....	.....	.....	.....	5,972	20,965	.....	.....	.....	.....	.....	.....	.....
1935	3,668,815	75,097	.....	.....	.....	.....	4,791	14,901	164	.....	.....	.....	.....	.....	.....
1936	3,859,509	144,447	.....	.....	.....	.....	8,476	17,768	950	1,965	.....	.....	.....	.....	.....
1937	3,246,037	135,915	.....	.....	.....	.....	7,358	18,599	882	5,850	132	.....	.....	.....	.....
1938	1,831,400	69,007	.....	.....	.....	.....	7,428	8,012	730	5,066	1,086	5,014	.....	.....	.....
1939	2,647,331	87,657	.....	.....	.....	.....	3,859	9,897	502	5,552	988	18,932	.....	.....	.....
1940	2,641,620	117,990	.....	.....	.....	.....	4,128	8,012	725	5,977	1,423	21,514	.....	1,026	.....
1941	3,145,103	133,801	.....	.....	.....	.....	3,678	4,195	332	5,635	.....	18,154	.....	6,043	.....

NOTE.—Includes American Rolling Mill Company.